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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RATTHAPON YAPUNYA, SOMKHIT NASEE,
and WISIT KAMPILO,

Plaintiffs,

vs.

GLOBAL HORIZONS MANPOWER, INC.,
MORDECHAI ORIAN, PLATTE RIVER
INSURANCE COMPANY, ACCREDITED
SURETY AND CASUALTY COMPANY, INC.,
VALLEY FRUIT ORCHARDS, LLC, and GREEN
ACRE FARMS, INC.

Defendants.

No. CV-06-3048-RHW

CLASS ACTION COMPLAINT
FOR DAMAGES AND DEMAND
FOR JURY TRIAL

CLASS ACTION COMPLAINT FOR DAMAGES AND DEMAND FOR
JURY TRIAL - 1

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I. INTRODUCTION

1.1 Plaintiffs are migrant farm workers from Thailand who bring this action to redress violations of their rights under the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 et seq., the Washington Farm Labor Contractor Act, and Washington and Hawaii state law by the defendant labor contractor and orchards who employed them in 2004 and 2005 in Washington and Hawaii.

1.2 Plaintiffs request jury trial.

II. JURISDICTION AND PARTIES

2.1 This court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. §1331 (Federal Question); 28 U.S.C. §1337 (Interstate commerce); and 29 U.S.C. §216(b) (FLSA.)

2.2 This court is requested to exercise supplemental jurisdiction over Plaintiffs' related state law claims pursuant to 28 U.S.C. §1367(a).

This case is brought as a combined class action and collective action pursuant to 29 U.S.C. §216(b).

2.3 All members of the class (as more fully defined below) are similarly situated for purposes of 29 U.S.C. §216(b).

2.4 Plaintiffs are citizens of the Kingdom of Thailand who at all times

1 relevant to Plaintiffs' claims were employed by defendant Global Horizons, Inc.
2 ("Global") as seasonal agricultural workers in orchards and fields in both Eastern
3 Washington and Hawaii. Plaintiffs were Defendant Global's employees within the
4 meaning of FLSA at 29 U.S.C. §203(e).

5
6 2.5 Plaintiffs were at all times relevant to this action employed by
7 Defendant Global as temporary foreign agricultural workers ("H2A workers") as
8 defined by the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(H)(ii), in
9 the production of goods for commerce or in an enterprise engaged in commerce.

10 2.6 Defendant Global is a California corporation with its principal place
11 of business in Los Angeles, California.

12
13 2.7 Defendant Global is an agricultural employer within the meaning of
14 FLSA at 29 U.S.C. §203(d).

15 2.8 Defendant Global is a farm labor contractor as defined by RCW
16 19.30.010 (2).

17 2.9 Defendant Mordechai Orian ("Orian") is a resident of the State of
18 California and liability against him is premised on the Fair Labor Standards Act
19 and/or the Washington Minimum Wage Act.

20
21 2.10 Defendant Platte River Insurance Company ("Platte River") is a
22 Nebraska corporation with its principal place of business in Madison, Wisconsin.

1
2 2.11 Defendant Platte River financed surety bond 41006867 in the amount
3 of \$10,000 for defendant Global Horizon pursuant to RCW 19.30.040.

4
5 2.12 Defendant Platte River financed an additional Surety Bond, Bond No.
6 41006926, in the amount of \$20,000 for defendant Global, effective October 1,
7 2004.

8 2.13 Defendant Accredited Surety and Casualty Company is Florida
9 corporation with its principal place of business in Winter Park, Florida.

10 2.14 Defendant Accredited Surety and Casualty Company issued Bond No.
11 10030062 to Global on December 22, 2004. A bond rider was issued on February
12 8, 2005 increasing the bond amount from \$60,000 to \$160,000.

13
14 2.15 Defendant Valley Fruit is a Limited Liability Company, with its
15 principal place of business in Harrah, Washington. Defendant Valley Fruit is an
16 agricultural employer pursuant to RCW 19.30.010(4).

17 2.16 Defendant Green Acre is a Washington Corporation with its principal
18 place of business in Harrah, Washington. Defendant Green Acre is an agricultural
19 employer pursuant to RCW 19.30.010(4).
20

21 **III. FACTS**

1 3.1 Defendant Global contracted in or about January 2004 to provide farm
2 labor contracting services, including recruiting, transporting, housing, and paying
3 workers, to two Washington orchardists, Valley Fruit Orchards, LLC (Valley
4 Fruit) and Green Acre Farms, Inc. (Green Acre).

5
6 3.2 Defendant Global did not have a Washington farm labor contractor's
7 license at the time it contracted with Valley Fruit and Green Acre.
8

9 3.3 Defendant Global failed to obtain a license to work as a farm labor
10 contractor in Washington State until in or about October, 2004.
11

12 3.4 Defendant Global engaged in farm labor contracting activities without
13 being licensed to engage in such activities, as required by RCW 19.30.030.
14

15 3.5 Defendants Valley Fruit and Green Acre knowingly used the services
16 of Global while Global was an unlicensed farm labor contractor.
17

18 3.6 Defendant Global sought and obtained the approval of the U.S.
19 Department of Labor for temporary labor certification for 131 foreign workers to
20 be employed at Green Acre pursuant to the H2A program for a period from March,
21 2004 until November 5, 2004.
22
23

1 3.7 Defendant Global sought and obtained the approval of the U.S.
2 Department of Labor for temporary labor certification for 62 foreign workers to
3 be employed at Valley Fruit from August, 2004 until October 31, 2004.
4

5 3.8 The temporary foreign agricultural worker program (“H2A”) is a
6 program provided for as part of federal immigration law which permits
7 agricultural employers to obtain temporary visas for foreign agricultural workers
8 provided that two conditions are met: a) there are not sufficient authorized
9 workers already in the United States to fill the positions offered; and b) the
10 positions are offered with terms and conditions which do not adversely affect
11 similarly employed U.S. workers. 8 U.S.C. 1188(a).
12

13 3.9 In their petition for H2A workers to the U.S. Department of Labor,
14 Global promised to comply with the terms of the approved application and the
15 regulations.
16

17 3.10 Under the law, the approved application contains terms and conditions
18 of employment which become part of the H2A worker’s contract of employment.
19
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1 3.11 The application contained, explicitly and implicitly by incorporation
2 of applicable law, regulations and U.S. Department of Labor policies, the
3 following provisions among others:
4

5 3.11.1 Housing would be provided that met OSHA standards, at
6 no cost to the worker;
7

8
9 3.11.2 Cooking Facilities would be provided;
10

11 3.11.3 The Employer would provide transportation or reimburse
12 the cost of inbound transportation and subsistence en route for any
13 worker who completed 50% of the contract period;
14

15 3.11.4 “Three-quarter Guarantee” (i.e., guaranteed work for at
16 least three-fourths of the workdays of the total contract);
17

18 3.12 In 2004, Global authorized, as its agent and pursuant to a Power of
19 Attorney, one or more Thai recruitment companies, including AACO
20 International Recruitment Company, Ltd. (“AACO”), to recruit workers in
21 Thailand for the H2A jobs certified by the U.S. Department of Labor in
22 Washington State.
23

1 3.13 AACO, acting through its agents and employees and in concert with
2 and at the request of Global, recruited plaintiffs for the H2A jobs.
3

4 3.14 Neither AACO nor any of its agents or employees was licensed as a
5 farm labor contractor in the State of Washington at any time relevant to this
6 complaint.
7

8 3.15 Global knowingly used the services of AACO to perform farm labor
9 contracting activities.
10

11 3.16 Plaintiffs were recruited in Thailand for the H2A jobs offered by
12 defendant Global and their agents and subcontractors.
13

14 Plaintiffs were not provided with any written statement describing the terms and
15 conditions of the H2A job being offered by Global at the time of recruitment.
16

17 3.17 Plaintiffs were not provided with any written statement describing the
18 terms and conditions of the H2A job being offered by Global at the time of hiring.
19

20 3.18 Global, through its agents and subcontractors, made false and
21 misleading oral representations to plaintiffs regarding the terms of their
22 employment at the time of recruitment.
23

1 3.19 AACO and its agents and employees had actual and/or apparent
2 authority to make misleading representations on behalf of Global.
3

4 3.20 Plaintiffs had to pay certain fees and expenses in order to obtain their
5 temporary foreign agricultural worker visas and travel to Washington state to work
6 for Global and Valley Fruit or Green Acre, including:
7

8 3.20.1 The costs of physical exams;

9 3.20.2 Visa application fees;
10

11 3.20.3 Travel back and forth from their homes in the Kingdom
12 of Thailand;
13

14 3.20.4 The costs of obtaining passports;

15 3.20.5 Service fees.
16

17 3.21 All of these fees and expenses were an incident of and necessary to
18 their employment with Global and Valley Fruit or Green Acre.
19

20 3.22 Plaintiffs incurred costs ranging from approximately \$10,000 to
21 \$17,000 each to obtain their jobs.
22
23

1 3.23 Global knew at the time the plaintiffs were recruited in the Kingdom
2 of Thailand and brought to the United States that the plaintiffs had paid or pledged
3 large recruitment fees in order to obtain employment with Global.
4

5 3.24 Plaintiffs paid these costs and fees in the Kingdom of Thailand to
6 defendants' agents and subcontractors – e.g., AACO. If the plaintiffs did not have
7 sufficient funds to pay the fees or borrow it from a bank, these agents and
8 subcontractors loaned them the money.
9

10 3.25 Plaintiffs had to assign deeds to property owned by themselves or
11 family members, both to secure payment of the fees still owing and to secure
12 plaintiffs' return to Thailand at the end of their contracts.
13

14 3.26 Shortly before leaving Thailand and after incurring great expense to
15 secure employment with Global, plaintiffs were given an employment agreement
16 between plaintiffs and Global, which plaintiffs were instructed to sign. After
17 plaintiffs signed the employment agreements, the agreements were taken away.
18

19 3.27 The employment agreement promised, among other things, that “all
20 agricultural workers [i.e., plaintiffs] shall be at work a minimum of eight (8) hours
21 per day, five (5) days a week”.
22
23

1 3.28 The employment agreement also promised, among other things, that
2
3 the hourly wage to be paid each plaintiff would be \$8.71.

4 3.29 The employment agreement also promised, among other things, that
5
6 that the employment agreement would be for one year and may be extended to 30
7 months at Global's discretion.

8 3.30 The agreement failed to state the approximate length of season, period
9
10 of employment or starting and ending dates of the H2A job that had been
11 approved.

12 3.31 Plaintiffs obtained visas and traveled to Washington State between
13
14 May and July, 2004.

15 3.32 Once in Washington State, plaintiffs were employed at orchards
16
17 owned by Valley Fruit and Green Acre until the Clearance Order ended on or
18 about November 5, 2004.

19 3.33 During the course of their employment, the Plaintiffs worked on crops
20
21 which were produced for movement in interstate commerce or for incorporation as
22 an ingredient in products which could be anticipated to move in interstate
23 commerce.

1 3.34 Defendants initially housed plaintiffs in overcrowded, substandard
2 conditions in housing that had not been approved by the Washington State
3 Department of Health or any other state or federal authority.
4

5 3.35 Defendant Global had represented in their H2A application to the U.S.
6 Department of Labor that the workers would be housed in a different location,
7 which had been approved by the State Department of Health.
8

9 3.36 Defendant Global made unlawful deductions from plaintiffs' pay for
10 state income taxes and federal income taxes in the State of Washington and/or the
11 State of Hawaii.
12

13 3.37 In or about November, 2004, Global transported plaintiffs Ratthapon
14 Yapunya, Somkhit Nasee and others ("Maui Plaintiffs") to Hawaii to work on an
15 H2A clearance order approved for the period from November, 2004 to September,
16 2005, for plaintiffs to harvest pineapples at the Maui Pineapple Company.
17

18 3.38 Maui Plaintiffs worked for defendant Global in Hawaii from
19 November, 2004 until September 15, 2005 and beyond.
20

21 3.39 In Hawaii, Defendants took deductions from Maui Plaintiffs' pay for
22 food without written authorization from the plaintiffs.
23

1 3.40 In Hawaii, Defendants took deductions from Maui Plaintiffs' pay for
2 federal income tax.

3
4 3.41 In Hawaii, defendants failed to pay overtime to Maui Plaintiffs for
5 work performed over 48 hours per week.

6
7 3.42 Maui Plaintiffs were not provided at least eight hours of work a day,
8 five days a week, from the beginning of their employment in violation of the
9 employment agreement.

10
11 3.43 In the State of Washington, Plaintiffs were not provided at least eight
12 hours of work a day, five days a week, from the beginning of their employment in
13 violation of the employment agreement.

14
15 3.44 In or about November, 2004, Global sent plaintiff Wisit Kampilo and
16 others ("Returned Plaintiffs") back to Thailand.

17
18 3.45 Global promised Returned Plaintiffs that they would be brought back
19 to Washington State to resume working within a few months.

1 3.46 Returned Plaintiffs were not offered any employment with Global
2 after returning to Thailand in November of 2004 until September of 2005 when
3 defendants finally brought them back to Washington for additional work.
4

5 3.47 Global breached its contract with Returned Plaintiffs because they
6 were not given work a minimum of eight hours a day, five days a week, at an
7 hourly rate of \$8.71 for a term of one year.
8

9 3.48 The costs and fees incurred by all plaintiffs in coming to the United
10 States to accept employment with Defendants reduced plaintiffs' wages below the
11 required minimum wage and below the wages defendants were obligated to pay
12 them.
13

14 3.49 For multiple weeks during their employment with defendants,
15 plaintiffs were not offered eight hours of work a day, five days a week, as
16 promised in the employment agreement drafted by Global.
17

18 3.50 Global's failure to pay minimum wage to each class member was
19 willful.
20

21 3.51 All of the actions and omission alleged in the paragraphs above were
22 undertaken by the defendants either directly or through their agents.
23

1 **IV. STATEMENT OF CLAIMS**

2 **A. FAIR LABOR STANDARDS ACT**

3 **First Cause of Action, Failure to Pay Federal Minimum Wage**

4
5 4.1 All facts alleged above are reasserted here in support of Plaintiffs'
6 cause of action set forth below.

7 4.2 At all times relevant to this action, the Plaintiffs were employed by
8 some or all of the defendants within the meaning of the FLSA.

9 4.3 Defendants failed to pay Plaintiffs the required minimum wage in
10 violation of 29 U.S.C. §206, giving rise to a cause of action under 29 U.S.C.
11 §216(b).
12

13 **B. WASHINGTON STATE CLAIMS**

14 **Second Cause of Action, Violations of Farm Labor Contractors Act**

15 4.4 All facts alleged above are reasserted here in support of Plaintiffs'
16 cause of action set forth below.

17 4.5 Defendant Global and their agents and subcontractors made false and
18 misleading representations to plaintiffs concerning the terms and conditions of
19 employment in violation of RCW 19.30.120(2).
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1 4.6 Defendants Valley Fruit and Green Acre are jointly and severally
2 liable with Global and its agents and subcontractors for all violations of FLCA,
3 pursuant to RCW 19.30.200

4 4.7 Defendant Global and its agents and subcontractors violated their
5 duties as farm labor contractors by:

6 4.7.1. Failing to provide written statements at the time of
7 recruiting, soliciting or hiring, whichever occurred first, as
8 required by RCW 19.30.110(7);

9 4.7.2. Failing to comply with the terms and provisions of their
10 agreements and contracts, in violation of RCW 19.30.110(5);

11 4.7.3. Acting as farm labor contractors without a license to do
12 so from the State of Washington, in violation of RCW
13 19.30.020.

14 Third Cause of Action: Washington State Wage and Contract Laws.

15 4.8 All facts alleged above are reasserted here in support of Plaintiffs'
16 cause of action set forth below.

17 4.9 Defendants violated Washington State wage law at R.C.W. 49.52.050
18 by taking unlawful deductions from Plaintiffs' wages. Cause of action provided
19 for at RCW 49.52.070.

1 Fourth Cause of Action: Breach of Contract.

2 4.10 All facts alleged above are reasserted here in support of Plaintiffs'
3 cause of action set forth below

4 4.11 Defendants entered into employment contracts with the Plaintiffs.

5 4.12 The defendants breached their contracts with Plaintiffs by failing to
6 comply with the promised terms and conditions of employment;

7 4.13 As a direct consequence of the defendants' breach, the Plaintiffs
8 suffered substantial consequential damages.

9
10 C. HAWAII STATE LAW CLAIMS

11 Sixth Cause of Action: Unlawful Withholding of Wages.

12 4.14 All facts alleged above are reasserted here in support of Plaintiffs'
13 cause of action set forth below.

14 4.15 Defendant Global deducted money from plaintiffs' Hawaii paychecks
15 that was neither required by federal or state statute nor authorized in writing by
16 plaintiffs, in violation of Hawaii Revised Statutes §388-6. Only the Maui Plaintiffs
17 (as defined below) assert claims based on Hawaii state law and these claims are
18 brought only against Global.
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V. CLASS ALLEGATIONS

5.1 This claim is brought on behalf of a class and/or sub-class(es) of similarly situated employees of defendants pursuant to FRCP 23. The general class is defined as follows:

All citizens of the Kingdom of Thailand who (1) were brought to the State of Washington in 2004 under the H2A visa program, (2) entered into employment agreements with Global that called for a minimum of eight hours of work a day, five days a week, at an hourly wage stated in the employment agreement (3) were not paid the required contractual minimum each and every week for at least one year from the date each class member first arrived in the State of Washington and (4) worked at Valley Fruit Orchards and/or Green Acre Farms.

The “Maui Plaintiffs” sub-class is defined as follows:

All citizens of the Kingdom of Thailand who (1) were brought to the State of Hawaii in 2004 and/or 2005 under the H2A visa program, (2) entered into employment agreements with Global that called for a minimum of eight hours of work a day, five days a week, at an hourly wage stated in the employment agreement, (3) were not paid the required contractual minimum each and every week for at least one year from the date each class member first arrived in the State of Hawaii, (4) had money deducted from their pay without their written authorization to purportedly pay for food, and/or (5) had federal and/or state income tax deducted from their pay, and (6) were not paid overtime for hours worked over 48 hours per week.

5.2 The Plaintiffs allege that the class is so numerous that joinder of all members is impractical, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of

1 claims or defenses of the class, and the representative parties will fairly and
2 adequately protect the interests of the class.

3 5.3 The prosecution of separate actions concerning the issues in this case
4 by or against individual members of the class would create a risk of:
5

6 (A) inconsistent or varying adjudications with respect to individual
7 members of the class which would establish incompatible
8 standards of conduct for the party opposing the class; or

9 (B) adjudications with respect to individual members of the class
10 which would as a practical matter be dispositive of the interest
11 of the other members not parties to the adjudications or
12 substantially impair or impede their ability to protect their
13 interest; or
14

15 5.4 The parties opposing the class have acted or refused to act on grounds
16 generally applicable to the class, thereby making appropriate final injunctive relief
17 or corresponding declaratory relief with respect to the class as a whole; and/or
18

19 5.5 The questions of law or fact common to the members of the class
20 predominate over any questions affecting only individual members, and that a class
21 action is superior to other available methods for the fair and efficient adjudication
22 of the class.
23

1 5.6 Common questions of fact include the following:

2 (A) Whether plaintiffs and class members were provided a
3 minimum of eight hours of work each day, five days a week, for a
4 minimum term of one year at an hourly rate as set forth in each
5 plaintiff and class members' employment agreement.

6 (B) Whether defendants deducted money from the plaintiffs and
7 class members' pay for food without written authorization.

8 (C) Whether defendants withheld state and/or federal income tax
9 from the plaintiffs and class members' pay.

10 (D) Whether defendants did not pay plaintiffs and class members
11 for overtime worked.

12 (E) Whether Global executed a revocable Power of Attorney with
13 AACO of Bangkok, Thailand.

14 (F) Whether Global appointed AACO to represent Global in
15 Thailand to recruit plaintiffs and class members for agricultural
16 jobs in the United States.

17 (G) Whether Global appointed AACO to locate, identify and screen
18 plaintiffs and class members for agricultural jobs in the United
19 States.

(H) Whether the plaintiffs and class members sustained consequential damages as a result of Global's breach of contract.

5.7 Common questions of law include the following:

(A) Is the mandatory arbitration provision in the employment agreement applicable and/or unenforceable?

(B) Did Defendants violate the Fair Labor Standards Act?

(C) Did Defendants violate the Farm Labor Contractor Act?

(D) Did Defendants breach the contracts with plaintiffs and class members?

(E) Did Defendants violate Hawaii Revised Statutes §388-6 as to the Maui Plaintiffs?

1. Did AACO act as Global's apparent or actual agent?

2. Is the class entitled to declaratory relief?

3. Is the class entitled to final injunctive relief?

4. Is the class entitled to aggregate class damages?

5. What is the measure of damages that each class member is entitled to recover?

VI. PRAYER FOR RELIEF

Wherefore, Plaintiffs request this Court:

6.1 Award Plaintiffs their unpaid minimum wages and an equal amount as liquidated damages together with costs of suit including reasonable attorneys fees, pursuant to 29 U.S.C. §216(b);

6.2 Award Plaintiffs an amount equal to the wages unlawfully withheld under the Washington Wage Payment Law as exemplary damages, together with costs of suit and reasonable attorney's fees pursuant to RCW 49.52.070;

6.3 Award Plaintiffs their unpaid wages under Hawaii wage payment laws, an equal amount as exemplary damages, and interest at a rate of six percent per year from the date that the wages were due, pursuant to HRS §388-10;

6.4 Award Plaintiffs their actual damages or statutory damages of \$500 whichever is greater, for each violation of the FLCA, together with the cost of suit including reasonable attorney fees and costs pursuant to RCW 19.30.180;

6.5 Declare that Defendants Green Acre and Valley Fruit knowingly used the services of Global when Global was an unlicensed farm labor contractor, and therefore are jointly and severally liable for the actions of defendant Global and its agents and subcontractors pursuant to RCW 19.30.200;

1 6.6 Award Plaintiffs their actual, incidental, and consequential damages
2 resulting from Defendants' breach of their employment agreement;

3 6.7 Order the sureties to tender to the Court the damages awarded to
4 plaintiffs up to the amount of all applicable bonds;

5 6.8 Award Plaintiffs prejudgment interest at the rate of 12% per annum on
6 the amounts of all their liquidated claims, pursuant to R.C.W. 19.52.010.
7

8 6.9 Award Plaintiffs such other relief as the court may deem just and
9 equitable.

10 6.10 Certify the class in this matter pursuant to FRCP 23(a) and 23(b)(2) or
11 FRCP 23(b)(3).
12

13
14 DATED this _____ day of June, 2006

15
16 ATTORNEY FOR PLAINTIFFS

17 STRITTMATTER KESSLER WHELAN WITHEY
18 COLUCCIO

19 s/Michael E. Withey

20 s/Brad Moore

21 MICHAEL E. WITHEY, WSBA #4787

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23

CENTER FOR JUSTICE

s/Breean L. Beggs

s/John D. Sklut

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CERTIFICATE OF SERVICE

I hereby certify that on June ____, 2006, I presented the foregoing CLASS ACTION COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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